

UTAH SCHOOL LAW UPDATE

Utah State Office of Education

June 2005

GRADUATION BLUES

The last few weeks of May are filled with phone calls from frantic parents who suddenly realize their child will not be able to participate in graduation ceremonies.

Some are excluded for **disciplinary reasons**. Some for complete **failure** to fulfill the core requirements, and some because they were **never students** at the school but mom and dad decide they want to see junior walk across a stage in a cap and gown.

All are legitimate reasons for excluding a student from the ceremonies.

Students who have earned a diploma are **entitled to receive the diploma**. A school can't deny a student his official diploma for non-payment of fees or as a disciplinary matter.

But student's have **no legal right** to attend the graduation ceremonies.

This does not mean a stu-

dent can be excluded for discriminatory reasons, but the student can be excluded because he or she defaced school property the week before graduation.

On the flip side, schools don't have to exclude students either. If a student failed to meet all of the

credit requirements in time, but is working toward



fulfilling the requirements, the school can allow the student to participate in the ceremonies with his or her class. The student will not receive a diploma at the ceremony, but could be handed the lovely fauxleather diploma cover.

In other words, the school can judge the student's situation and decide if exclusion from the ceremonies is the best course of action.

Though rare, there are also occasions when a parent of a home-schooled student will insist that, since the student would have attended the school had he or she gone to public school, he or she should be allowed the experience of a graduation ceremony.

Again, the school can decide to **accommodate** such a request, but once it grants such a privilege, it must be consistent. In other words, all home school students must be given the same opportunity unless the school can show some exceptional reason why student A was allowed to attend and not student B (such as student A actually attended several classes at the school).

Graduation marks student achievement, thus, the **privilege** of participating must be earned.

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UPPAC CASES

The Utah State Board of Education did not take action on any educator licenses at the June Board meeting.

UPPAC Cases of the Month

Across the nation, educators engage in conduct that violates state professional practices rules and district policies similar to those in Utah.

The educators' attorneys also make similar arguments against disciplinary action as those in Utah.

The following cases provide examples of the standards courts apply when deciding these types of cases:

Professional Standards

Commission v. Alberson (Ga. App. 2005). The court upheld the suspension of a superintendent's license for "good and sufficient cause" where the superintendent **displayed a fire-arm** to a construction flag person during an altercation.

The superintendent initiated the confrontation which occurred on a public highway during school hours.

The court noted that the superintendent had adequate notice that his conduct was wrong given that gun use by students is a major public policy concern and, as UPPAC also argues, educators have a duty to act as role models for students in their public and **private** lives.

Walthart v. Board of Directors of Edgewood-Colesburg Community School District,

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Please note:
We will not
publish in
July. See you
in August!



Eye On Legislation-Updates

<u>Carson Smith Scholarship</u>: In response to recent legislation, the State Office of Education has completed the applications for private schools and parents seeking to participate in the Carson Smith Scholarship program.

As the law required, parents may apply for a scholarship if they meet one of three requirements. First, if their student is currently in a **public school** and has an IEP, the student may qualify for the scholarship.

Second, if the student is currently in a private school and wants to enroll in another private school that **specializes** in serving students with special needs, he may apply for the scholarship.

Finally, if the student currently

attends a private school that specializes in serving student's with

disabilities, the student may apply for a scholarship.

Judging from phone calls received at the State Office, there is some confusion among parents about the purpose of the scholar-

Some parents have asked for applications for students without disabilities who just aren't doing well in school, thinking the scholarships apply to any student who wants to try private school.

Parents have also asked for applications for students in preschool. The scholarships are for students in kindergarten through 12th grade, or

longer if required by the IEP.

A few have asked for scholar-

ships to continue in their current, non-specialized, private school. While students in private schools may receive the

scholarship, they are only eli-

they have been accepted into a private school that specializes in serving students with disabilities or are currently attending such a school.

gible for the scholarship if

In other words, students in schools such as Waterford or Rowland Hall would not be eligible for the scholarship if their intent is to remain at Waterford or Rowland Hall.

Parents, per the law, can get

Recent Education Cases

Robbins v. Regents of University of California, (Cal. App. 2 Dist. 2005). The appeals court found that a 4-H Club administrator acted reasonably when she suspended two students.

The students participated in a **film-making** project. Their film involved two students who were teased by their peers going to a party and slashing their peers with machete-type knives.

The administrator suspended

the students pending **psychological evaluations** to determine if they presented a risk of violence to other students.

The students claimed the adminclause. istrator violated their **free speech** rights. Owen 2005).

The court found that the 4-H Club was the "functional equivalent" of a school since it involved young people meeting for educational purposes and was sponsored by the university. As such,

the temporary suspension of the students to protect the safety of other students was reasonable and did not violate the free speech clause.

Owens v. Parrinello, (W.D.N.Y. 2005). A New York court ruled that a community college could refuse to award a degree to a **home schooled** student who had the required credits but did not have a degree or GED.

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UPPAC cases cont.

(Continued from page 1)

(Iowa 2005). The court upheld a school district's termination of an employee who allowed students to consume **alcohol at a party** on her property.

The teacher claimed she did not know the students were drinking and only took their car keys to prevent them from driving in a field on her property.

Four of the students left the party to get more beer and were killed.

The teacher claimed the evidence that she had knowledge students

were drinking was all hearsay.

The court disagreed, finding enough direct evidence from students at the party to support the claim that the teacher knew of the drinking and ruling that the hearsay evidence was reliable and corroborated the direct evidence.

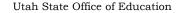
Green v. New York City Dept. of Educ., (N.Y.A.D. 1 Dept. 2005). The court ruled that a public school teacher could be dismissed from employment based on her conviction for **grand larceny**.

The teacher had filed fraudulent pa-

pers related to her other job as a landlord and had prior convictions for similar acts of fraud.

An educator's actions off of school grounds and outside of the school day can be the basis for disciplinary action. Educators are expected to serve as role models for their students. Serving in that role is difficult if the educator is convicted of a crime, is on court-ordered probation, or otherwise exhibits a general

disregard for the rules of professional practices or state and federal laws.



Eye on Legislation (Cont.)

scholarship applications from their local school districts. Private

schools can receive applications to participate in the program from the State Office of Education.

<u>UBSCT</u>: The Utah Basic Skills Competency Test takes full effect for the

2005-2006 school year. In anticipation, the State Office of Education is working with school districts to come up with **alternatives** for students who just can't pass the test.

Students need to take advantage of the multiple testing opportunities provided in the law. If they do, and still can't pass the test or a portion of the test, districts

need to decide if the student's academic record otherwise justifies some form of diploma.

The current State Board of Education rule provide for **different diplomas**—one for

students who pass the core requirements and UBSCT and one for students who pass the requirements, except UBSCT.

There is also a "certificate of completion" for students who attend school for 12 years without completing the requirements.

Various legislators have ex-

pressed concern about the absolute standard of the UBSCT requirement. They are currently discussing options with USOE staff for narrow, legitimate **exceptions** to the UBSCT.

In the meantime, districts should encourage students who have not passed all portions of the test to take every opportunity AND **notify** parents this summer if their student has failed portions and again after the administration in October.

The USOE can help explain and/or offer a model letter for parent notification.

Your Questions

Q: I am retiring from my school counselor position and don't know what to do with personal notes regarding students.

A: It depends on the content of the notes. If the notes contain information that would be useful for the counselor's replacement, it may be best to put the notes in the student's file or otherwise share the notes with the replacement.

Notes could also be summarized for the replacement.

Be warned however, that any sharing of the notes in any form, or use

What do you do when...?

for working with the student, renders the notes part of the student's education records, accessible to the parents of any students named in the notes and some select others.

The best solution may be to destroy the notes. Personal notes belong to the counselor, unless he

shares them, and can be destroyed whenever the counselor feels the notes are no longer needed (assuming no pending or ongoing lawsuit or request where the notes might be required).

Q: Can a school create a school song by revising the lyrics of a Disney-tune?

A: Sure, if it is prepared to pay Disney's copyright fees (or legal fees if the school uses a song without prior

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Recent Cases Cont.

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The court ruled that the college's requirement that students have either a high school diploma or GED did not violate **equal protection.** The requirement was rationally related to a legitimate government interest in maintaining academic standards

and the integrity of degree-granting programs.

As a side note, despite winning the court battle, the state, which imposed the regulations, subsequently eliminated the diploma requirement and the college granted the student his degree.

Williams v. Vidmar, (N.D. Cal 2005). The court found no violation of a teacher's First Amendment Rights where the principal

repeatedly directed the teacher not to use materials with a **religious content** and to submit supplemental materials for her approval before distributing the materials to a class of elementary students. The court ruled that the principal could prohibit the teacher from using materials that, on their face or through instruction, promoted a particular religious belief.

The teacher, however, was allowed to continue his suit for violation of his **equal protection** rights. The court ruled that there were sufficient questions of fact as to whether other teachers were allowed to use materials with religious content without the principal's **prior approval**.

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The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

Your Questions Cont.

(Continued from page 3) permission).

Disney music, like most music produced within the last 100 years, is protected by copyright. In order to use any part of the song, including just the music sans lyrics, requires Disney's permission.

That permission comes with a price tag. Some music may have lower copyright fees than others, but chances are a Disney tune will have a pretty steep fee.

Better to stick to the classic military tunes!

Q: Can a school enroll a student in kindergarten who is not 5 by Sept. 2?

A: No. There are no exceptions in the law on this issue. The student may be enrolled if he or she meets the cutoff date, not a moment before. This can be hard to impose, particularly where the student is coming from another state and already has a year of school behind him. However, the cutoff date is one of those rare absolutes in the law. There are no exceptions for extremely bright students, out of state students, or parents who need a free babysitting service.

If the child has already attended school elsewhere, his parents have some options. They could send the child to a private school for the year or continue working with the child at home or through private tutoring services.

The district can also test the child when he or she **does** meet the cutoff and place the child in a higher grade if that is appropriate under the circumstances.

Q: Can a principal who is being inundated with media requests,

refuse to allow the media access to the school?

A: Yes. Schools, though public, are not open to any member of the public, including the media, who may want to pop in. A principal can certainly tell media representatives that he will gladly meet with them after school hours or at the district offices, for example.

The school's job is education, not media access. If the principal does not want a media circus in the hall-ways or the office during school hours, he or she can keep the media out.

To maintain public relations, however, the principal should be courteous to the media and offer alternatives, such as the ones above, for access.

Principals should not permit interviews with students on school grounds without prior parental consent.